

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No. 2:10-CR-27-D

UNITED STATES OF AMERICA

v.

MORRIS CORNELIUS KEE,

Defendant.

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ORDER

On April 11, 2011, pursuant to a written plea agreement, Morris Cornelius Kee ("Kee") pleaded guilty to conspiracy to distribute and possess with intent to distribute 500 grams of cocaine and more than 50 grams of cocaine base (crack). See [D.E. 1, 22, 23]. On October 31, 2011, the court held Kee's sentencing hearing. See [D.E. 46, 47]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report ("PSR"). See Fed. R. Crim. P. 32(i)(3)(A)-(B). The court calculated Kee's total offense level to be 33, his criminal history category to be IV, and his advisory guideline range to be 188 to 235 months' imprisonment. See Resentencing Report. After granting the government's motion under U.S.S.G. § 5K1.1 and thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Kee to 150 months' imprisonment. See [D.E. 47]. Kee did not appeal. On September 26, 2013, pursuant to Federal Rule of Criminal Procedure 35(b), the court reduced Kee's sentence to 113 months' imprisonment. See [D.E. 50].

On November 30, 2015, Kee moved for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782 to the Sentencing Guidelines. See [D.E. 53]. Kee's new advisory guideline range is 151 to 188 months' imprisonment, based on a total offense level of 31 and a criminal history category of IV. See Resentencing Report. Kee requests a 91-month sentence. See id.; [D.E. 53].

The court has discretion to reduce Kee's sentence under Amendment 782. See, e.g., Dillon v. United States, 560 U.S. 817, 827 (2010); United States v. Peters, 843 F.3d 572, 574 (4th Cir. 2016); United States v. Patterson, 671 F. App'x 105, 105–06 (4th Cir. 2016) (per curiam) (unpublished); United States v. Cole, 618 F. App'x 178, 178–79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225–26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195–97 (4th Cir. 2013); United States v. Mann, 709 F.3d 301, 306–07 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce Kee's sentence, the court finds that Kee engaged in serious criminal behavior. See PSR ¶¶ 10–13. The conspiracy took place for approximately five years and involved approximately 592 grams of cocaine and 171 grams of cocaine base (crack). See id. ¶¶ 1, 13. Kee also assaulted two law enforcement officers while attempting to elude arrest. See id. ¶ 11. Kee is a recidivist who has prior convictions for simple assault, possession with intent to sell and deliver marijuana, possession of cocaine, cruelty to animals, and resisting a public officer. See id. ¶¶ 16–25. Moreover, Kee has performed poorly on supervision. See id. ¶¶ 19, 20, 23. Finally, Kee has taken some positive steps while incarcerated on his federal sentence. See Resentencing Report; cf. Pepper v. United States, 562 U.S. 476, 491 (2011).

Having reviewed the entire record, all relevant policy statements, and the reduction under Rule 35(b), the court finds that Kee received the sentence that was “sufficient, but not greater than necessary” under 18 U.S.C. § 3553(a). Further reducing Kee's sentence would threaten public safety in light of his serious criminal conduct and serious criminal history. Cf. U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Thus, the court denies Kee's motion for reduction of sentence under Amendment 782.

See, e.g., Patterson, 671 F. App'x at 105–06; Cole, 618 F. App'x at 178–79; Thomas, 546 F. App'x at 225–26; Perez, 536 F. App'x at 321.

In sum, the court DENIES Kee's motion for reduction of sentence [D.E. 53].

SO ORDERED. This 18 day of February 2018.


JAMES C. DEVER III
Chief United States District Judge